



April 9, 2001

Mr. Michael A. Parks, AICP
Transportation Planning Director
Bryan/College Station Metropolitan Planning Organization
4001 East 29th Street, Suite 170-B
Bryan, Texas 77802-4211

OR2001-1411

Dear Mr. Parks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145774.

The Bryan/College Station Metropolitan Planning Organization (the “organization”) received a request for several categories of information concerning routes considered by the organization. You seek a decision from our office concerning only the request for “any and all data, documents, notes, or transcripts of discussions that were performed or obtained that reflect the presence or value of archeological resources along all 23 routes that were considered.” We, therefore, presume that you have released the remaining requested information. *See* Gov’t Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information it must release information as soon as possible under the circumstances). You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. You also state that you have notified the Texas Historical Commission of the request so that they may submit additional comments to this office. *See* Gov’t Code § 552.304 (providing that interested party may make comments stating why information should or should not be released). We have considered the exception you claim and have reviewed the submitted information.

We note at the outset that a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov’t Code § 552.301(e). You did not, however, submit to this office a copy of the written request for information.

A governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. See Gov't Code § 552.302. A governmental body can overcome this presumption by demonstrating a compelling reason why the information must be withheld from disclosure. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ); see also Open Records Decision No. 319 (1982). A demonstration that the requested information is deemed confidential by law or implicates a third party's interest is a compelling interest sufficient to overcome this presumption. See Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," we will address the organization's assertions relevant to that exception.

Section 552.101 encompasses information protected by other statutes. Section 191.004 of the Natural Resources Code provides:

- (a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this Chapter is not public information.
- (b) Information specifying the location or nature of an activity covered by a permit or an application under this chapter is not public information.
- (c) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

Nat. Res. Code § 191.004. You state that the submitted information was prepared by your consultant. You do not, however, explain, nor do the documents show on their face, how the submitted information is confidential under section 191.004 of the Natural Resources Code. Furthermore, we did not receive any comments from the Texas Historical Commission explaining the applicability of the raised statute. Therefore, we cannot find that the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 191.004 of the Natural Resources Code. Accordingly, the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

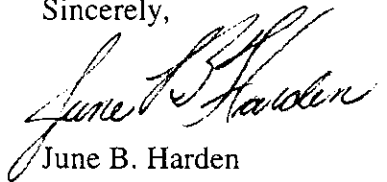
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being the most prominent.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/RJB/seg

Ref: ID# 145774

Encl. Submitted documents

cc: Mr. John Whiting
10800 Boxley Bend Road
College Station, Texas 77845
(w/o enclosures)